



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34750620

Date: OCT. 17, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a business executive in the financial technology industry, seeks classification under the employment-based, first preference (EB-1) immigrant visa category as a noncitizen with “exceptional ability.” See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner met one of the requested visa category’s ten initial evidentiary criteria – two less than needed for a final merits determination. On appeal, the Petitioner contends that the Director erred in finding that he did not also satisfy evidentiary criteria regarding:

- Published materials about him in his field;
- His authorship of scholarly articles in the field; and
- His commandment of a high salary or other significantly high remuneration for services in the field.

8 C.F.R. § 204.5(h)(3)(iii), (vi), (ix).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, see *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he has not met two additional evidentiary criteria. We will therefore dismiss the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- Seek to continue work in their field of expertise in the United States; and

- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Evidence must initially demonstrate a noncitizen’s receipt of either “a major, international recognized award” or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).¹ If a petitioner meets either standard, USCIS must then make a final merits determination as to whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing them among the small percentage at their field’s very top. *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. Facts and Procedural History

The record shows that the Petitioner, a Chinese native and citizen, has served as an executive for an online retail company in his home country for about the past nine years. He oversees the company’s financial technology services firm, which employs more than 8,900 people. Under the Petitioner’s leadership, the firm has integrated artificial intelligence and “big data” technologies into its products, which include popular online payment and consumer credit applications.

The Petitioner states his intent to continue working in the financial technology field in the United States. He says he has received two U.S. job offers and that his current employer’s U.S. operations might employ him.

The record does not indicate – nor does the Petitioner claim – receipt of a major internationally recognized award. He must therefore meet at least three of the initial evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director’s finding of the Petitioner’s submission of evidence of his participation as a judge of others’ work in his field. *See* 8 C.F.R. § 204.5(h)(3)(iv). We will next review the additional evidentiary requirements he claims to have met. The Petitioner must objectively satisfy the parameters of each regulatory criterion. *See generally* 6 *USCIS Policy Manual* F.(2)(B).

B. Authorship of Scholarly Articles

To meet this criterion, a petitioner must submit “[e]vidence of [their] authorship of scholarly articles in the field, in professional or major trade publications or other major media.” 8 C.F.R. § 204.5(h)(3)(vi).

¹ If an evidentiary standard does not “readily apply” to a petitioner’s occupation, they may submit “comparable evidence” to establish eligibility. 8 C.F.R. § 204.5(h)(4).

When adjudicating this requirement, USCIS first determines whether a petitioner has authored scholarly articles in the field. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). A scholarly article reports on original research, experimentation, or philosophical discourse and is written by a researcher or expert in the field. *Id.* Scholarly articles also generally undergo peer review by other experts in the field of specialization. *Id.*

The Agency next determines whether a publication qualifies as a professional, major trade, or major media publication. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). In evaluating publications, relevant factors include: for professional journals or major trade publications, the intended audience; and, for major media, the circulation, readership, or viewership relative to other media in the field. *Id.*

The Petitioner submitted a copy of an article he wrote in 2023 for the *China Banking and Insurance News*. The article discusses integration of financial services into the Chinese agricultural industry.

The Director concluded that the record did not demonstrate the article's distribution in a professional, major trade, or major media publication. The Director stated that "none of the informational materials suggest that the intended audience of the *China Banking and Insurance News* is tied to a specific profession or trade" or "offer any insight to the relative circulation or readership of *China Banking and Insurance News*."

The Petitioner, however, has sufficiently established *China Banking and Insurance News* as a professional or major trade publication. The phrase "professional or major trade publications" "expressly refers to publications which are read by people in a particular profession or trade, rather than the population at large." *Braga v. Poulos*, No. CV 06-5015 SJO (FMOx), 2007 WL 9229758, *6 (C.D. Cal. July 6, 2007). The Petitioner submitted copies of online information identifying the *China Banking and Insurance News* as a nationwide, daily newspaper published Monday through Friday. Overseen by the China Banking and Insurance Regulatory Commission, the newspaper focuses on the banking and insurance sectors. Evidence shows that the newspaper's target audience constitutes banking and insurance professionals. Thus, the publication does not attract the Chinese population at large. The record therefore sufficiently identifies the newspaper as a professional or major trade publication.

The record does not establish, however, the Petitioner's authorship of a scholarly article. Unlike a scholarly article, the Petitioner's newspaper piece contains little research or details and only generally and briefly discusses its topic. The article's primary purpose appears to be to market the financial services and products of the Petitioner's employer. The record also lacks evidence that peers reviewed the article or that others in the field cited the piece in their work. The record therefore does not establish the article as scholarly in nature.

The Petitioner has not demonstrated his authorship of scholarly articles in his field. We will therefore affirm the Director's finding on this evidentiary criterion.

C. High Salary or Significantly High Remuneration

This criterion requires "[e]vidence that the [noncitizen] has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R.

§ 204.5(h)(3)(ix). USCIS evaluates petitioners working outside the United States, like the Petitioner, based on wage statistics or comparable evidence relevant to their work locations. *See generally* 6 USCIS Policy Manual F.2(B)(1).

The Petitioner submitted copies of original and online versions of his Chinese income tax records for 2021 and 2022. The original records for 2021 list his total income – including both salary and stock-related compensation – as 5,567,813.42 RMB, or about \$782,060. The original records for 2022 reflect total income of 7,787,602.62 RMB, or about \$1,093,854. He also submitted copies of 2021 salary guides for China.

Considering only the Petitioner's salary income, the Director found insufficient evidence of his commandment of a high salary or significantly high remuneration for his services. On appeal, the Petitioner contends that the Director should have considered his stock compensation as part of his income.

The salary guides provided by the Petitioner, however, do not indicate whether their income figures include both salaries and stock-related compensation. The Director assumed that the guides' incomes reflect only salaries. So, the Director disregarded the Petitioner's stock-related income. Nothing in the record indicates the guides' inclusion of stock-related compensation. The Director therefore reasonably considered only the Petitioner's salary. To have his stock-related income considered, the Petitioner must show that the incomes listed in the salary guides include stock compensation. Otherwise, he must provide data indicating how much stock-related income executives in China in positions similar to his typically receive.

Also, although unaddressed by the Director, the Petitioner's tax records are inconsistent. While the copies of the original tax records state his total 2021 income as 5,567,813.42 RMB, the online records list salary and stock-related payments that year of only 5,063,413.42 RMB. Similarly, the copies of the original tax records state his total 2022 income as 7,787,602.62 RMB. But the online records show payments that year of only 6,855,256.22 RMB. Further, the Petitioner provided a letter from his employer stating that, beginning in 2020, he received an annual salary of 2,100,000 RMB. The online tax records for 2021, however, show his receipt of wages and a 553,000-RMB bonus, totaling 2,326,165.52 RMB. The online tax records for 2022 similarly indicate wage payments of only 1,870,057.14 RMB. The Petitioner has not explained these income discrepancies. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring petitioners to resolve inconsistencies with independent, objective evidence pointing to where the truth lies). The discrepancies cast doubt on the accuracy of the Petitioner's evidence and claimed income.

The Director did not notify the Petitioner of these evidentiary inconsistencies. Thus, in any future filings in this matter, he must resolve the discrepancies with independent, objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591.

The Petitioner has not submitted evidence of his commandment of a high salary or other significantly high remuneration compared to others in his field. We will therefore affirm the Director's denial for this evidentiary criterion.

D. Published Materials

The Petitioner also asserts his satisfaction of the evidentiary requirement regarding published materials about himself. *See* 8 C.F.R. § 204.5(h)(3)(iii). But, to obtain a final merits determination, he needs to satisfy two more criteria. Thus, we need not reach and hereby reserve consideration of his appellate argument regarding the criterion at 8 C.F.R. § 204.5(h)(3)(iii). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make “purely advisory findings” on issues unnecessary to their ultimate decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where an applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not demonstrated his satisfaction of two additional evidentiary criteria for the requested category.

ORDER: The appeal is dismissed.